



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Steven W. Mosher, President  
Population Research Institute, Inc.  
1190 Progress Drive, Suite 2D  
Front Royal, VA 22530

OCT - 6 2009

RE: MUR 6173  
Population Research Institute, Inc.


Dear Mr. Mosher:

On February 12, 2009, the Federal Election Commission notified you, as President of Population Research Institute, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on September 25, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact William Powers, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,  
  
Julie McConnell  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

29044252700

29044252701

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Population Research Institute, Inc. MUR: 6173

**I. INTRODUCTION**

This matter arises from a complaint alleging that the Population Research Institute, Inc. ("PRI" or "Respondent") violated 2 U.S.C. § 441b by using corporate resources to prepare and distribute an electronic newsletter expressly advocating the election of presidential candidate John McCain, resulting in an "illegal corporate expenditure." Complaint at 1-2. The Respondent admits sending its *Weekly Briefing* electronic newsletter on October 30, 2008, but asserts that the costs of the communication were *de minimis* and claims that the newsletter qualifies for the Act's "press exemption." Response at 3-7.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

PRI is a 501(c)(3) nonprofit corporation registered in Virginia. See Response at 1; see also Population Research Institute, Inc., IRS Form 990 (2006), available at <http://www.guidestar.org/FinDocuments/2007/541/819/2007-541819935-0415de52-9.pdf>. PRI

---

<sup>1</sup> The response also argued that emails are not "public communications" under 11 C.F.R. § 100.26 and, as a result, its electronic newsletter cannot constitute an impermissible corporate "expenditure" under the Act. See Response at 3. While emails are exempt from the definition of "public communication," and thus the provisions of the Act incorporating that term (*i.e.*, federal election activity, electioneering communications, coordinated communications, disclaimers, definition of an "agent" of a state or local candidate, allocation rules for spending by separate segregated funds) would not apply, see *Internet Communications*, 71 Fed. Reg. 18,589, 18,591-92, 18,596-97 (Apr. 12, 2006), the Act and Commission regulations do not limit the definitions of "expenditure" or "independent expenditure" to "public communications." See 2 U.S.C. §§ 431(9)(A), 431(17); 11 C.F.R. §§ 100.16, 100.111. Therefore, the fact that the *Weekly Briefing* may not have been a public communication does not affect whether it is an expenditure or contribution under the Act.

1 states that it is "a research organization dedicated to publishing information to debunk population  
2 myths, expose misleading claims and programs, emphasize the value of people, promote  
3 profamily attitudes and encourage programs to help the poor" and that it "pursues this mission  
4 principally through research and publication." *See* Response at 4; *see also* 2006 Form 990,  
5 Statement of Exempt Purpose.

6 On October 30, 2008, PRI emailed and posted on its website an electronic newsletter  
7 entitled "PRI Weekly Briefing - Vote as if Lives Depend on It," which is reproduced below.

29044252702

**PRI Weekly Briefing - Vote as if Lives Depend on It**

From: pri@pop.org  
Sent: Thu 10/30/08 2:54 PM  
To:



Next Tuesday, the voters will arguably determine, by their choice of candidates, the fate of the pro-life cause for a generation. The differences between the candidates on the Life issues could not be more dramatic. We at PRI would like to urge each and every one of you to vote in this election—and to vote pro-life.

Staven Mosher

## **Vote as If Lives Depend on It - Because They Do**

by Colln Mason

On Tuesday, we will participate in a historic election.

The stakes are high, and the campaign hard-fought. Already in states like North Carolina and Florida, early voting has drawn record-smashing crowds. The nation's voters are engaged in this election to a degree rare in American history and pro-life voters must play their part. It is of paramount importance that values voters go to the voting booth on November 4<sup>th</sup>, and that they bring their pro-life convictions with them.

There are stark differences between the two candidates on the life issues. John McCain has a perfect pro-life voting record in his years in the Senate, and has chosen a committed social conservative as his running mate. Barack Obama, for his part, has a record of consistently voting against the unborn. His radical stance in favor of abortion is illustrated by his insistence, at a Planned Parenthood function, that on the "fundamental issue" of choice, he "will not yield and Planned Parenthood will not yield."

### **If elected, John McCain would**

- Veto the so-called Freedom of Choice Act, which would overturn any and all restrictions on abortion, including parental consent laws, waiting periods, informed consent laws and the like.
- Serve as a check on the Congress, where a pro-abortion majority dominates both the House and the Senate.
- Appoint strict constructionist justices to the Supreme Court, who less likely to distort the meaning of the Constitution to serve their political and ideological ends.
- Issue Executive Orders which protect and defend innocent human life.
- Sign pro-life laws and amendments into law, thus encouraging Congressional pro-lifers to work on

### **If elected, Barack Obama would:**

- Sign into law the so-called Freedom of Choice Act.
- Preside over a government dominated by the party of abortion, putting both the executive and the legislative branches in the hands of a single party.
- Appoint justices on the basis of their "empathy," rather than on their adherence to the original intent of the Founders.
- Issue Executive Orders which promote the cause of abortion, and increase its numbers.
- Veto any pro-life laws and amendments that reached his desk.
- Serve with a vice president who shares his determination to promote abortion on demand without

29044252703

behalf of such legislation • Enjoy the support of a staunchly pro-life vice president	restrictions.
--	---------------

This is, for the pro-life movement, a watershed election. If the pro-life candidate wins, he will be able to protect our gains of past decades, and ensure that the federal judiciary is populated by judges who will not legislate from the bench. If the pro-abortion candidate wins, not only will all of our gains be undone, abortion-on-demand will be written into national law.

Spread the word. Get involved. And on November 4<sup>th</sup> vote as if millions of lives depend on it. Because they do.

Vote pro-life.  
Cohn Mason is Director of Media Production at PRI.

Sign up for the Weekly Briefing Here

Media Contact: Cohn Mason  
Email: [cmason@pop.org](mailto:cmason@pop.org)  
Phone: 540-622-5240 ext. 209

© 2007 Population Research Institute. Permission to reprint granted.  
Reproduction solely. Credit required.

PRI is a 501(c)(3) educational organization. If you would like to make a tax-deductible donation to PRI, please go to our Donations Page. All donations (of any size) are welcomed and appreciated.

-----

The pro-life Population Research Institute is dedicated to ending human rights abuses committed in the name of "family planning," and to ending counter-productive social and economic paradigms premised on the myth of "overpopulation." Find us at [www.pop.org](http://www.pop.org)

PRI, PO Box 1559, Front Royal, VA 22630 USA Phone: 540-622-5240

Click here if you do not want to receive further emails.

See Complaint Attachment 1; *see also* Response at 2, 6 n.4. PRI allegedly sent this communication to any person who signed up to receive its newsletter on its website and did not limit distribution to its restricted class. *See* Complaint at 2. PRI acknowledges disseminating the newsletter, but claims that it was part of its regular electronic newsletter, the *Weekly Briefing*, which it has published continuously for over ten years. *See* Response at 2, 4-6. In addition, PRI states that it has removed the October 30, 2008, *Weekly Briefing* from its website as a precautionary measure. *See id.* at 6, n.4.

**B. Legal Analysis**

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office. 2 U.S.C. § 441b(a).<sup>2</sup> The Act defines “contribution” and “expenditure” to include any gift of money or “anything of value” made for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i), (9)(A)(i). In determining whether a corporation makes an expenditure, the Commission analyzes whether the communication at issue expressly advocates the election or defeat of a clearly identified federal candidate. *See* 11 C.F.R. § 100.22. Under the Commission’s regulations, a communication expressly advocates the election or defeat of a clearly identified candidate when, among other things, it “uses phrases such as ‘vote Pro-Life’... accompanied by a listing of clearly identified candidates described as ‘Pro-Life.’”. 11 C.F.R. § 100.22(a).

The exhortation in PRI’s October 30, 2008, *Weekly Briefing* to “vote pro-life,” also identifies a candidate with the “perfect pro-life voting record.” This clearly constitutes express advocacy, as defined in Section 100.22(a) and by the Supreme Court in *FEC v. Massachusetts Citizens for Life*. 479 U.S. 238 (1986).<sup>3</sup> For this reason, an analysis of this communication under section 100.22(b) is unnecessary.

---

<sup>2</sup> The constitutionality of the Act’s prohibition on corporate expenditures is a question currently pending before the Supreme Court. *See Citizens United v. Fed. Election Comm’n*, No. 08-205 (U.S. reargued Sep. 9, 2009).

<sup>3</sup> In *MCFL*, a nonprofit organization prepared and distributed a “Special Edition” before the September 1978 primary elections. The front page of the publication was headlined “EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE,” and admonished readers that “[n]o pro-life candidate can win in November without your vote in September.” “VOTE PRO-LIFE” was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the “pro-life” candidates. *See id.* at 243. Additionally, the “Special Edition” flyer identified candidates for each state and federal office in Massachusetts, identified their positions on three pro-life issues, and placed an asterisk and a photograph next to candidates who maintained a “100% pro-life voting record.” *See id.* at 243-44. The Supreme Court concluded that

29044252705

1 Although PRI's newsletter contains express advocacy, and therefore is a corporate  
2 expenditure under the Commission's regulations, the costs of producing this newsletter were *de*  
3 *minimis*. The complaint acknowledges that the cost of the newsletter may be "relatively little,"  
4 Complaint at 2, and the response estimates that the value of the staff time used to produce the  
5 newsletter was no more than \$35.00. *See* Response at 7. As the Commission has noted in its  
6 Explanation and Justification relating to Internet Communications, "there is virtually no cost  
7 associated with sending e-mail communications, even thousands of e-mails to thousands of  
8 recipients. . . ." *See* 71 Fed. Reg. at 18,596 (explaining why email is not a form of "general  
9 public political advertising").

10 Therefore, because of the *de minimis* nature of the activity, the Commission dismisses  
11 this matter in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S.  
12 821 (1985).

---

The [MCFL Special Edition Newsletter] cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature. The Edition goes beyond issue discussion to express electoral advocacy.

29044252706